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No. 00-1300

Supreme Court, U.S.
FILED
JUN 1 2001
CLERK

In The

# Supreme Court of the United States

Douglas Paul Dodge,
Petitioner(s)
v.
Kathryn Lucille and Donald Graville,
Respondents

Reply to Brief in Opposition
to Petition for Writ of Certiorari
To The Arizona Supreme Court

## REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

page

REPLY to Brief in Opposition..... 1

Timeliness of Question 2..... 1

What does "therapeutic intervention" mean?..... 2

Fitness of the Parents..... 3

At the time of Trial the Step Mother had not adopted the children..... 6

Conclusion..... 7

TABLE OF AUTHORITIES

CASES page

***Dodge v Superior Court of AZ***, No. 1 CA-SA 990235 ( Ariz. App. filed Nov. 26, 1999)..... 3,7

***Graville v. Dodge I,*** 195 Ariz. 119, 985 P.2d 604 (App. 1999)..... 2

***Guethe v. Truscott,*** 1995.AZ.16202 , 912 P.2d 33, 185 Ariz. 29, 206 Ariz. Adv. Rep. 18..... 7

***Jackson v. Tangreen,*** No. 1 CA-CV 99-0542, 2000 WL 1873228 (Ariz. App., filed Dec 26,2000).....2,6,7

***Troxel v. Granville,*** 530 U.S. 57 (2000)..... 5,7

**REPLY to Brief in Opposition**

Per United States Supreme Court Rule 15.6 this is a reply to new points made in the Brief in Opposition submitted in the instant case, 00-1300. The intent of this reply is to point out where the Petitioner feels mistakes in law and fact were made in the Brief in Opposition. Points will be taken in their order of appearance in the Respondent's Brief in Opposition.

**Timeliness of Question 2**

The first issue lies on Page 1 of the Respondents Brief in Opposition questioning whether a timely constitutional challenge was made of to one of Arizona's third party visitation statutes, ARS §25-409, during the appeal that led to the Petitioner's Petition for Writ of Certiorari. To support this position the Respondents place in the appendix (pages App 20 and App 21) just two pages from the Petitioner's Petition for Review to the Arizona Supreme Court ignoring the body of that petition and the opening brief to the Appeals Court.

The Respondents ignore the entire section starting on page 20 of the Opening Brief labeled Item "C Unconstitutional Application of Arizona's Grandparent Visitation Statute". Quoting from this section briefly "The Hendrix order goes far beyond the surviving portions of the Keppel [order] in substantially interfering with Dodge's

right of custody and control" Clearly this is an open invitation for the court to take up the constitutionality of the grandparent visitation statute. The Arizona Appeals Court recognized that this was a constitutional challenge when it replied in paragraph [44] of its opinion ( contained in the Appendix of the Petitioner Petition for Writ of Certiorari. Since this was a matter that was timely petitioned to the Arizona Supreme Court and then the United States Supreme Court clearly this issue is separate and not to be confused with either ***Jackson v. Tangreen***, quoted by the Respondent, or ***Graville v. Dodge I.***

The fact that the Arizona Appeals Court has ruled on this issue twice in the past does not mean that either ruling was correct or that it prevents the United States Supreme Court from considering the question.

**What does "therapeutic intervention" mean?**

The Respondent on page 3 makes much of alternate definitions, stated without authority, of what the court instructions to the psychologist in the instant case, meant or should have meant. Not withstanding the Respondent's ignoring of psychological, legal, and conventional dictionaries available in the public domain the Petitioner's position is that the meaning does not matter.

In fact what is clear are two pertinent facts concerning the Hendrix order. First that this was instruction from the court to a medical profes-

sional. Secondly that the professional was given total control over the treatment of the Petitioner's children without regard for the Father's or the children's mother's position on whether this treatment was helping or harming the children. The Father was ordered to provide unfettered access to Dr. Block of the children, on Dr. Block's time frame, for what ever purpose Dr. Block decided was appropriate, and as frequently as Dr. Block desired. Only the court could change the course of the treatment and the provider of the treatment, no matter how apparently harmful this treatment might have been to the children. It does not matter whether the care provider, Dr. Block would be motivated by good or bad intentions, there is simply no protection to the children in this arrangement.

The Respondents do include the unpublished opinion in ***Dodge v Supreme Court of AZ***, 1 CA-SA 99-0235 in their appendix. The Arizona Appeals court in this case found great difficulty with the never ending control of the Dodge Family life contained in the Hendrix order and while only considering a narrow portion of this order the court struck (¶26 on page App 15 of the Respondent's Brief in Opposition) as invalid all provisions that asserted never ending control being vested in a court appointed psychologist.

**Fitness of the Parents**

The Respondent, on page 4, distorts Judge Hendrix's statements by stating, "the presumption of the parent, as a fit parent, .....had been burst." Clearly Judge Hendrix said nothing of the sort. That the Father is a fit parent, as explained in the Petition for a Writ of Certiorari had been stipulated by the Respondents, not once but several times. The State of Arizona approved the adoption of these children by the Petitioner's wife with all the attendant background checks mandated by Arizona law. Both the states of Arizona and Washington thoroughly evaluated the Father in the process of licensing him as a peace officer in their states. Finally the State of Arizona requires by law a dependency hearing **prior to declaring a parent unfit** where unfitness must be proved by clear and convincing evidence. The Respondent on the other hand would have you believe that disagreeing with a judge over whether third party visitation is or is not in the best interest of the children would constitute the definition of parental unfitness. Or perhaps the Respondent believes that accessing constitutionally mandated remedies in law, such as filing an appeal to protect one's children from harm constitutes parental unfitness.

In fact there are no allegations of abuse or neglect, simply because the Dodge's are exemplary parents! If anything Mr. Dodge finds himself addressing the United States Supreme Court due to his overwhelming desire to protect his children from harm due to action of perhaps well meaning but certainly uninformed and mis-

guided 3rd parties. A complete reading of the record makes it clear that Mr. Dodge never withheld visitation, merely temporarily suspended for good cause.

The Respondents and their attorney make this allegation of unfitness without cited authority because there is nothing to support such a preposterous statement. Justice Souter in his concurring opinion in ***Troxel v. Granville*** stated, "It would be anomalous, then, to subject a parent to any individual judge's choice of a child's associates from out of the general population merely because the judge might think himself more enlightened than the child's parent."

When one can become an unfit parent merely by differing in opinion with an uninformed third party, certainly more than the 14th amendment to the US Constitution is offended. In fact this one statement by the Respondent is completely illustrative of what is truly wrong in this case.

The Arizona judicial system is treating the Petitioner not as the fit parent he is but rather as a defacto unfit parent, ordering dubious professional treatment with no diagnosis or pretense that this treatment is somehow necessary to prevent harm to a child. The treatment is apparently only perceived as beneficial to achieving some goal of the state unrelated in any meaningful or demonstrable way to the children's welfare. The natural protection provided by involved fit parents is to be supplanted by a remote and uncaring court that cannot even find time to interview the subjects involved most directly in

this exercise, the children.

The Respondent and others (AARP) imply or state incorrectly that this case was one where grandparents that cared for children were stripped of their contact by death of the natural mother. The reality is now being obscured by five contentious years of litigation can, however, be obtained by carefully reading the record. The Respondent's were never in *loco parentis* to the children. If they had been most likely they would have attempted to establish such a status, as many Arizona litigating grandparents do, under ARS § 25-415 C. The pertinent part of this statute is as follows, "C. The superior court may grant a person who stands in loco parentis to a child, including grandparents and great-grandparents, who meet the requirements of section 25-409 reasonable visitation rights to the child....."

The Respondents had substantial, even generous (more than they were awarded by the court) contact with the children after the death of the mother. This visitation was suspended due to nightmares, grandparent mis-behavior, and other signs of stress being caused by the visits. The Respondents prior to trial refused to consider a substantial offer of visitation to the point that in fact under the current interpretation of ARS §25-409 contained in ***Jackson v. Tangreen*** they would have no status whatsoever to petition the court for visitation.

**At the time of Trial the Step Mother had not adopted the children**

The Arizona court system and the Respondents place considerable weight on this fact on page 7. The reality was that the adoption was in process at the time of trial, the Respondents knew about it, and it was a race to the courthouse where the parent's had no control of the outcome. Only the State of Arizona could control the timing. The parents lost the race by one month. It seems unreasonable to the parents that the outcome of their attempts to shield their children from harm should hinge on a bureaucratic controlled race to the court house. While winning this race may have saved the parents a great deal of hassle, pain, and cost (and maybe it wouldn't considering the starkly different positions taken by the Arizona Appeals Court on stepparent adoption in just 5 years from ***Guethe v. Truscott***, to ***Dodge v Superior Court of AZ***, and now ***Jackson v. Tangreen***). The Petitioner cannot see any logic why the Respondent sees this fact as having any relevance to the instant Petition.

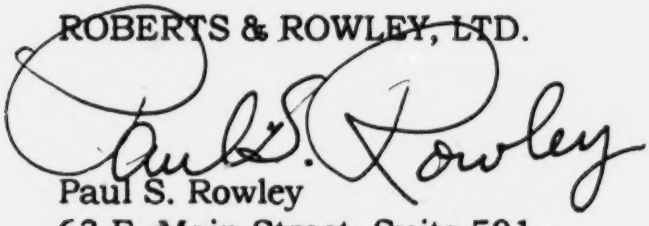
**Conclusion**

The rulings in the Arizona Courts remain inconsistent with ***Troxel v. Granville***. Often Arizona judges, with the encouragement of the Ari-

zona Court of Appeals, maintain that ***Troxel v. Granville*** does not apply for a wide variety of reasons. The issues brought up in this Petition for Writ of Certiorari remain a load to endure for many others unable to afford the heavy burden of years of litigation endured by the Petitioner. For this and the above reasons along with those previously stated in the Petition for Writ of Certiorai the Petitioner, Douglas Paul Dodge requests the court to accept its Petition for Writ of Certiorari and to rule accordingly.

RESPECTFULLY SUBMITTED this 1st day of June, 2001.

ROBERTS & ROWLEY, LTD.



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